IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.131/2002

M/s. Consolidated Distributors Pvt.Ltd.,
represented by their director
Shri Narendra Indulal Bhuva,
having their Office at Survey No.51/1,
52/2, Daman Industrial Estate,
Near Jaisingh Wire, Kadiaya,
District Bhimpore, Daman (U.T.). ... Petitioners.

V/s.

1. Economic Development Corporation
Ltd., a Company registered under the
Companies Act of 1956, represented
by their Managing Director Shri
Palekar, having their office at
EDC House, 1st Floor, Dr.Atmaram
Borkar Road, Panaji, Goa.

2. M/s. Polycab Cable Pvt. Ltd.,
a Company registered under the
Companies Act of 1956, having their
Office at Daman Industrial Estate
Village Kadaiya, District Bhimpur
Daman. ... Respondents.

Mr. G.K. Sardessai, Advocate for the petitioners.

Mr. M.S. Sonak, Advocate for the respondent No.1.

Mr. A.N.S. Nadkarni, Advocate General with Mr. H.D. Naik, Advocate for respondent No.2.

CORAM : V.C. DAGA &
P.V. HARDAS, J.J.

DATE : JUNE 19, 2002.

ORAL JUDGMENT : (V.C. DAGA, J.)

Rule. Respondents waive service. By consent of parties, heard finally.

2. This petition is by a Private Limited Company who had an industrial unit at Daman, established in the year 1996, on the borrowings made from respondent No.1, a State owned corporation, engaged in the business of industrial financing. (hereinafter referred to as 'the Corporation' for short).

3. The petition is directed against the action of the Corporation, initiated under Section 29 of the State Financial Corporation Act, 1951 ("the Act" for short), contending that the action taken is arbitrary and not in good faith and the proposed action to proceed with the sale of their Industrial Unit – is in violation of their fundamental rights guaranteed under Articles 14 and 19(1)(g) of the Constitution of India.

B A C K D R O P

F A C T S

4. The relevant facts to appreciate the case of the petitioners are as under :

The petitioners were sanctioned term loan for their industrial unit by the Corporation in the sum of Rs.240.00 lakhs which was subsequently revised to Rs.265.00 lakhs. However, finally respondent No.1 sanctioned and released loan of Rs.200.00 lakhs with

interest at the rate of 25% per annum.

5. The petitioners committed defaults in repayment of loan. The reasons given by the petitioners are that they had negotiated business deal with one Indian Petrochemical Corporation Ltd., (IPCL), Vadodora, having constructed storage tanks at Daman for storage and distribution of liquid chemicals and solvents. However, the said business deal could not go through, as a result thereof, the cash flow got affected with the result petitioners could not meet their schedule of repayment agreed with the the Corporation. The petitioners further went on to state that the Administration of Daman having issued new guide-lines for imposing sales tax extending various concessions, the major companies engaged in the storage and marketing of petroleum products and liquid chemical had also opened negotiations with the petitioners for erection of the storage tanks, however, the said negotiations did not fructify. The petitioners, therefore, could not meet their financial commitments in the matter of repayment of loan.

6. The petitioners further stated that sometime on 24.3.1999, the petitioners were in receipt of a letter from the Corporation, calling upon them to make repayment of their outstanding dues. The petitioners, however, by their letters dated 6.4.1999 and 5.5.1999 requested for

revision of repayment schedule and made certain proposals so as to reduce their loan liability. However, the said proposal did not find favour with the Corporation, with the result, the Corporation served a recall notice dated 22.3.2000 followed by final notice dated 2.1.2001 under Section 29 of the Act so as to take over management and possession of the industrial unit of the petitioners at Daman. Petitioners replied to the said final notice by their letter dated 4.1.2001. However, the Corporation in exercise of powers under Section 29 of the Act proceeded to take possession and management of the petitioners' unit and ultimately, petitioners were deprived of their possession with effect from 5.1.2001.

7. The petitioners further stated that pursuant to one time settlement scheme of the Corporation, for encouraging repayment of the outstanding loans, due and payable to the Corporation, they by their letter dated 23.3.2001 submitted their proposal for one time settlement. However, there was no reply from the Corporation. The petitioners further stated that their offer for one time settlement was pending before the Corporation and during the pendency of the said proposal the Corporation could not have proceeded to take over possession of the industrial unit owned by the petitioners.

8. The petitioners further brought on record that the Corporation issued advertisement for sale of the industrial unit on tender-cum-auction basis in the various news papers, but did not insert single advertisement in the local news papers having vide circulation in the area in which the industry is located. Consequently, the Corporation could not secure good amount of bids. It is also alleged that the approach of the Corporation cannot be said to be public oriented. The submission is that the Corporation is expected to act fairly and reasonably in the matter of exercise of powers under Section 29 of the Act and as a sequitur thereof they are expected to be above board while disposing of the mortgaged properties of the borrowers.

9. The petitioners, during the course of arguments on merits, contended that the notice inviting tender has not been published in the local news papers, with the result, best price for the unit could not be secured.

10. The next contention raised by the petitioners was that no reserve price of the industrial unit was fixed and the auction was conducted with undue haste, as such, the sale stands vitiated.

11. The petitioners have placed reliance on two

Judgments of the Apex Court – one in the matter of Allahabad Paper Mills Co. Ltd., v. Bengal Paper Mills Co. Ltd. (J.T.1999 (3) S.C. 168) and another in Haryana Financial Corporation and another v. Jagdamba Oil Mills and another (2002 (3) S.C.C. 496 in support of their submissions.

12. The Corporation filed its reply and raised the following three preliminary objections to the maintainability of the petition :

(a) the petition suffers from gross delay and laches:

(b) the petition suffers from suppression of facts, material particulars and documents;

(c) the petition suffers from disputed questions of fact.

13. The learned Counsel for the Corporation on merits, submitted that the petitioners have been the chronic defaulters. As against the principal amount of Rs.200 lakhs borrowed by the petitioners in 1997, they made repayment of Rs.33 lakhs only, between the period from 1997 to 1999 leaving the dues outstanding as on 19.4.2002 to the tune of Rs.5,27,79,748/-. The present

petition, therefore, is nothing but a ploy to seek waiver of an amount of Rs.400.00 lakhs and an attempt to create undue hurdles in the way of respondent/Corporation in the matter of recovery of its dues. He further submitted that the petitioners by their letter dated 28.2.2000 had assured payment of at least Rs.45.00 lakhs by end of June 2000, out of which the first instalment of Rs.15.00 lakhs was to be paid by the end of March, 2000. However, no such payments were made. Consequently, the Corporation had no option, but to resort to the action under provision of Section 29 of the Act, after issuing as many as 4 to 5 demand-cum-show cause notices.

14. The Corporation, in addition to the above contentions, also brought on record all the steps taken by them from time to time to afford reasonable opportunity to the petitioners to discharge their liability including the steps taken by them to secure best price for the unit so as to recover maximum outstanding dues of the Corporation, which, in turn, helped to reduce the liability of the petitioner/Company and of the Directors, who are guarantors for repayment of the amount of loan borrowed by the petitioner/Company. All the material details of the procedure adopted by the Corporation while disposing of the industrial unit of the petitioners along with entire supporting documents are placed on record in support of the contention advanced by

the Corporation.

15. The learned Counsel appearing for the Corporation, further pointed out that the unit, in question, has been sold to the respondent No.2 on receipt of down payment of Rs.100.00 lakhs and required sale deed has also been executed in their favour, xerox copies of which has been placed on record. In order to establish fairness on their part in conducting sale of the petitioners' unit, he relied upon the contents of the affidavit and the correspondence, copies of which are placed on record.

ANALYSIS OF SUBMISSIONS

16. Before we proceed to consider the merits of the various challenges set up, we propose to consider preliminary objections raised on behalf of the respondents against the maintainability of the writ petition. At the outset, we must observe that the petition suffers by gross delay and laches. The action under Section 29 of the Act, was complete by 5.1.2001. No steps were taken to challenge the same. Thereafter, third party rights have been created. During the course of hearing, a Deed of Assignment cum Sale dated 24.5.2002 is brought to our notice, wherein; the industrial unit of the petitioners stands assigned and transferred in

favour of respondent No.2 in a sale conducted by the Corporation in exercise of powers under Section 29 of the Act. This petition has been filed some time in the third week of April, 2002. The action under Section 29 was complete on 5.1.2001. There is no explanation whatsoever for this unreasonable delay of 15 or 16 months in filing the present petition.

17. In M/s. Tilokchand Motichand and ors. v. H.B. Munshi, (A.I.R. 1970 S.C. 898) it was observed by the Supreme Court that the party claiming fundamental rights must move the Court before third party rights come into existence. The action of courts cannot harm innocent parties, if their rights emerge by reason of delay on the part of the person moving the Court. In the case of State of M.P. and others etc.etc. v. Nandlal Jaiswal and others (A.I.R. 1987 S.C.251), the Supreme Court refused to entertain the petition as there was considerable delay in filing the writ petition and in the intervening period, respondents had acquired land, constructed distillery buildings, purchased plant and machinery and spent considerable time, money and energy towards setting up the distillery unit, the delay was held to be fatal. Similarly, in State of Orissa v. Sri Pyarimohan Samantaray and others (A.I.R. 1976 S.C. 2617), it was held that the petition was liable to be dismissed on the ground of inordinate, unexplained delay.

Considering all these catena of decisions and in the absence of any explanation whatsoever explaining the delay in presenting the petition. This is a first ground on which we refuse to exercise our jurisdiction.

18. Apart from the delay in moving this petition, the petition as filed and the averments made therein are absolutely sketchy. Suppression of material facts, in the petition, are writ large. The petitioners have not only suppressed number of notices and letters but attempted to conceal serious defaults, committed by them right from the year 1997. The petitioners have suppressed relevant correspondence from which it is evident that the petitioners had given false assurances and commitments while persuading the Corporation to refrain from initiating any action under Section 29 of the Act. Needless to mention that none of the assurances and commitments made were complied with by the petitioners. Not a single averment is to be found in the petition showing compliance of the commitment made by the petitioners from time to time. Notices had been regularly addressed to the petitioners in the matter of defaults committed by them. Such notices issued are dated 21.1.1998; 4.5.1998; 21.5.1998; 6.7.1998; 23.7.1998; 15.9.1998; 21.10.1998; 6.11.1998; 3.2.1999 and 24.3.1999. In the petition, the petitioners have merely referred to a letter dated 24.3.1999 giving an

impression that prior to the said date, the petitioners have committed no defaults and without any opportunity to them, action under Section 29 of the Act has been taken. This clearly amounts to willful suppression of material facts on the part of the petitioners disentitling them to invoke writ jurisdiction of this Court.

19. It appears after notice dated 24.3.1999, number of opportunities have been afforded to the petitioners to regularise their loan account. By notice dated 28.9.99, it was brought to the notice of the petitioners that not a single rupee has been paid by them despite commitments in writing contained in communications dated 5.5.1999 and 5.8.1999. This fact has also been suppressed in the petition. Needless to mention that writ petitions are decided on the basis of the statements on oath. If petition contains misleading or inaccurate statements or there is suppression of material facts, in such a case the petitioner is not entitled to any relief in such petitions. In Tilokchand Motichand V. H.B. Munshi (supra) the Supreme Court held that the petitioner had no right to move the Court for enforcement of his fundamental right as the petition suffered from suppression of facts. In the State of Haryana and ors. v. The Karnal Distillery Co. Ltd. and another (A.I.R. 1977 S.C. 781), the Supreme Court refused to grant relief on the ground that the appellant

had misled the Court. This petition is liable to be dismissed on the short ground that the petitioners have not approached this Court with clean hands and suppressed material facts with due knowledge. Hence, this is not a fit case to exercise writ jurisdiction.

20. The petition also contains a number of disputed questions of facts which, in our opinion, cannot be gone into in the writ jurisdiction of this Court. On this count also petition is liable to be dismissed. During the course of hearing, it was suggested to the petitioners that they should withdraw this petition with liberty to approach the Civil Court so that all disputed questions can be gone into. However, the petitioner did not agree to our suggestion and requested for decision on merits.

21. The petitioners have also contended that the decision making process and the decision to sell the unit did not answer the norms laid down by the Apex Court from time to time and tried to find fault with the action taken by the Corporation. Before considering the contention in this behalf, let us fix the contours of the judicial review on the basis of the Judgments of the Supreme Court. In the case of Tata Cellular v. Union of India, (1994) 6 S.C.Cs. 651, wherein the Supreme Court has laid down the following principles in the matter :

94.The principles deducible from the above are:

(1) the modern trend points to judicial restraint in administrative action.

(2) The Court does not sit as a Court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning i an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above), but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and budgeted expenditure."

22. In the case of Haryana Financial Corporation and another v. Jagdamba Oil Mills and another (supra), the Apex Court had occasion to deal with the scope of judicial review in the following

words:

> " The matter of action by the Corporation in exercise of the powers conferred on it under Section 29 of the Act, the scope of judicial review is confined to two circumstances i.e. (a) where there is statutory violation on part of the State Financial Corporation, or (b) where State Financial Corporation acts unfairly i.e. unreasonably. While exercising its jurisdiction under Article 226 of the Constitution of India the High Court does not sit as an Appellate Authority over the acts and deeds of the Corporation. Similarly, the Courts other than the High Court are not to interfere with the action under Section 29 of the Act unless the aforesaid two situations exist."

With the aforesaid contours of the judicial review, let us find out what should be the approach of the statutory Corporations in the matter of sale of public property. The Supreme Court in the case of Haryana Financials Corporation (supra), in para (14) of the said Judgment ruled as under :

> In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold. This can be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer. Public auction after adequate publicity ensures participation of every person who is interested in purchasing the property and generally secures the best price. But many times it may not be possible to secure the best price by public auction when the bidders join together so as to depress the bid or the nature of the property to be sold is such that suitable bid may not be received a public auction. In that event, any other suitable mode for

> selling of property can be by inviting tenders. In order to ensure that such sale calling tenders does not escape attention of an intending participant, it is essential that every endeavour should be made to give wide publicity so as to get the maximum price. These are aspects which the Corporations have to keep in view while dealing with disposal of seized units."

23. Based on these principles, let us examine and find out whether the Corporation acted in bad faith with oblique motive so as to deprive the petitioners of their property and failed to act reasonably and fairly, especially on the canvas of the contentions of the petitioners. In the matter like the present one, it is needless to mention that fairness cannot be a one way traffic. The reasonableness of one party cannot be seen or examined in isolation. Reciprocal fairness should be the guiding factor.

24. Turning to the facts of the case in hand first tender-cum-auction was scheduled to be held on 18.4.2001. In order to invite bids, advertisements were published in the daily "Navhind Times" and "Tarun Bharat" dated 24.3.2001, which are local newspapers. Apart from this, in order to get better offers from entrepreneurs operating in the other parts of the Country, advertisements were also floated in all six Editions of National Daily "Financial Express" dated 27.3.2001 published from Mumbai, Kochi, Bangalore, Chennai, Kolkotta and New Delhi. The highest bid

received was of in the sum of Rs.21.00 lakhs, which was too inadequate to be accepted. The Corporation rejected said offer and decided to hold another auction.

25. The second tender-cum-auction was fixed for 29.9.2001 for which again advertisements were inserted in the local dailies "Gomantak" (Marathi) and "O Herald" dated 18.9.2001. For this second auction which was scheduled to be held on 28.9.01, again the highest offer received was in the sum of Rs.21.00 lakhs only. For the reasons as aforesaid, the said offer received on second occasion was also rejected by the Corporation. The Corporation decided to proceed for yet another auction.

26. The third tender-cum-auction came to be fixed on 26.12.2001. The advertisements were published in local daily "O Herald" dated 14.12.2001 and National Daily "Business Standard" dated 18.12.2001 including in its Mumbai, New Delhi, Chennai, Calcutta and Hyderabad Editions. In this third auction which was scheduled on 26.12.2001, one M/s. Anil Aurora submitted his highest bid/offer in the sum of Rs.40.00 lakhs that too on deferred payment basis. The Committee constituted by the Corporation felt that this offer could not be rejected at the threshold, and thought of opening negotiations with M/s.Anil Arora for increase in the bid

amount. Pursuant to the negotiations, M/s. Anil Arora initially agreed to increase its bid amount to Rs.46.00 lakhs and thereafter on further persuasion to Rs.60.00 lakhs on deferred payment basis.

27. The Corporation vide their communication dated 1.3.2002, informed the petitioners that one Mr. Anil Arora has submitted a bid for Rs.60.00 lakhs on deferred payment basis i.e. Rs.21.00 lakhs payable within seven days from the date of acceptance of the offer and the balance amount of Rs.39.00 lakhs payable over a period of two years in eight equal instalments with interest thereon at the rate of 20 % per annum from the date of handing over of the assets till repayment in full and final. The petitioners were called upon to submit their better offer backed up with earnest money deposit equivalent to 5 % of the offer by Demand Draft within a period of seven days from the date of receipt of the communication. By communication dated 13.3.2002, the petitioners stated that they have a party willing to offer Rs.65.00 lakhs and that earnest money deposit shall be despatched shortly. However, no details of the party were disclosed in the communication dated 13.3.2002. The communication was vague. This communication was shown to us. It contains no details. It vaguely states that the value of the property is definitely more than Rs.60.00 lakhs.

28. In the meantime, prior to finalisation of acceptance of bid of m/s. Anil Arora, the Corporation received a better offer from the respondent No.2 for purchase of the attached assets for a lump sum cash payment of Rs.80.00 lakhs. This offer was accompanied by a Demand Draft of Rs.8.00 lakhs towards the earnest money deposit. This was followed by further payment of Rs.2.00 lakhs towards earnest money deposit as respondent No.2 was persuaded to increase its offer to Rs.100.00 lakhs. Upon receipt of the aforesaid offer for Rs.100.00 lakhs, as a measure of fairness, the Corporation, in all fairness, addressed communication dated 19.3.2002 to the petitioners, informing them about such offer and giving the petitioners fresh opportunity to offer better offer backed with earnest money deposit within seven days. A similar communication was also addressed to Mr. Anil Arora, informing him about the receipt of the fresh offer of Rs.100.00 lakhs on down payment basis so as to give him an opportunity to improve his offer on or before 25.3.2002. No better offer was received either from the petitioners or from M/s. Anil Arora. Since the offer of respondent No.2 for Rs.100.00 on cash down payment basis was a better offer, as against the offer of M/s. Anil Arora which was based on deferred payment basis and the vague offer of the petitioners offering payment of Rs.70.00 lakhs in instalment over a period of 12 months that too after

disposing of the assets, the Corporation thought of agreeing to sell the said property to respondent No.2 for Rs.100.00 lakhs and agreed to sell the said unit to the respondent No.2. The respondent No.2 have proved their bonafides by making down payment of Rs.17.00 lakhs by the communication dated 28.3.2002 and balance amount of Rs.73.00 lakhs by cheque dated 4.4.2002. Thus upon receipt of entire down payment of Rs.100.00 lakhs, the possession of the unit was handed over to respondent No.2 on 8.4.2002. The registered Deed of Assignment-cum-Sale also came to be executed by the Corporation in favour of the respondent No.2, purchaser of the Unit.

29. On the above backdrop, now let us consider whether the decision taken by the Corporation to dispose of this industrial unit of the petitioners for Rs.100.00 lakhs is bonafide, fair and reasonable or suffers from any vice of arbitrariness violative of fundamental rights of the petitioners.

30. Firstly, our attention was drawn to letter dated 25.9.2000 addressed by the petitioners to the Corporation wherein the petitioners themselves have stated that the present realisable value of assets including land is not more than Rs.70.00 lakhs. The relevant contents of the said letter read as under :

> "We now request you to consider waiver of total interest (Simple, Compound & penal if any) and we are agreeable to pay a sum upto Rs.70.00 lakh only which is the realisable market value of the assets.
>
> We propose to raise the above sum of Rs.70 lakh only over a period of 12 months by disposing the Fixed Assets. We request you to give us permission to dispose of all the assets and depositing the entire proceeds to EDC."
>
> [Emphasis supplied]

This letter was suppressed by the petitioners. This letter has come on record from the custody of the Corporation. It is a clear admission on the part of the petitioners that the realisable value of their industrial unit, including the land is upto Rs.70.00 lakhs only.

31. There is yet another letter on record, addressed by the petitioners to the Corporation dated 31.10.2000, wherein again the realisable value of the assets of the unit, including the land, has been reiterated to be in the region of Rs.70.00 lakhs only. The relevant part of the said letter reads as under :

> "We once again reiterate our stand to consider our proposal to convert this Corporate loan into term loan and then consider our OTS proposal. As stated by us, the present realisable value of the assets including Land is approx Rs.70 lacs and we are willing to sell all our assets to repay your loan. We can start accepting enquiries only after you approve the above OTS proposal. We have no other means to repay your loan, since our Project has not even started and we have not commenced production also."
>
> [emphasis supplied]

On the touchstone of the aforesaid clear admissions on the part of the petitioners, admitting the realisable value of the assets including land not exceeding Rs.70.00 lakhs, the decision of the Corporation needs to be examined.

32. The Corporation disposed of the industrial unit of the petitioners for Rs.100 lakhs. In other words the Corporation realised Rs.30.00 lakhs more than the expected price which the petitioners were expecting for their industrial unit. Can it, by any stretch of imagination, be said to be an imprudent or unreasonable or unfair decision on the part of the Corporation in disposing of the industrial unit of the petitioners ? In our opinion, answer must be in negative. No fault can be found with the decision of the Corporation looking to the various attempts made by them to secure best price for the unit. Under these circumstances, by no stretch of imagination, it could be said that the respondent No.2 faulted in any manner in taking decision to dispose of the industrial unit of the petitioners to respondent No.2. Flawless decision making process adopted by the Corporation, in our opinion, must result in dismissal of this petition even on merits.

33. The petitioners, during the course of arguments on merits, contended that the notice inviting tender has not been published in the local news papers, with the result, best price for the unit could not be

secured. This ground has lost its strength in view of the fact that the purchaser of the unit is the next door neighbour of the petitioners. Therefore, in our opinion, the petitioners are not right in contending that there was no adequate publicity in the local area where the unit is situated. Had it been so, the next door neighbour would not have purchased the said unit for 100.00 lakhs. No prejudice, therefore, can be inferred as canvassed by the petitioners.

34. The next contention raised by the petitioners was that no reserve price of the industrial unit was fixed and the auction was conducted with undue haste, as such, the sale stands vitiated. This contention is not to be found in the petition. The petitioners cannot be allowed to travel beyond the scope of their petition. The contention, therefore, raised in this behalf is rejected for want of necessary pleadings.

35. The petitioners tried to contend that the Corporation had been unfair to them while rejecting their one time settlement offer given by them. In this behalf, our attention was drawn to the offer given by the petitioners for one time settlement wherein the petitioners offered to make payment of Rs.140 lakhs which included an amount of Rs.32.00 lakhs already paid by them to the Corporation till the date of submitting proposal for one

time settlement. In other words, after subtracting this amount of Rs.32.00 lakhs from the offer of Rs.140.00 lakhs, the offer to settle in one stroke, in substance, was only for Rs.108.00 lakhs as against the total liability of Rs.5,27,29,748.00. This offer for one time settlement was not from the petitioners, but it was from one of their sister concern M/s. Narendra Holding Pvt. Ltd. This offer was also vague. The amount was sought to be paid in 18 monthly instalments of Rs.2,00,000/- each. The total period during which this amount was to be paid was 21 months. The Corporation, vide letter dated 29.6.2001, had called upon the petitioners to show their bonafides by making down payment equivalent to 10% of the principal balance amount i.e. Rs.19,99,825/- on or before 30.6.2001 and requested them to furnish better revised offer. It appears that the petitioners failed to submit revised offer with the result, the Corporation had no option but to reject the offer made by the petitioners. Rejection of the offer was communicated to the petitioners by respondent No.1 vide its letter dated 16.7.2001. Even after 16.7.2001, no steps were taken by the petitioners either to challenge the said rejection of the offer for one time settlement, nor any revised better offer was given by them. In all the correspondence, the petitioners have been harping and reiterating about the pendency of their proposal of one time settlement. The Corporation time and again denied pendency of any such offer. When we called upon the petitioners to substantiate

these assertions made by them in their various letters, the learned Counsel for the petitioners fairly conceded that no such fresh offer for one time settlement other than their offer dated 23.06.2001 was given, which was ultimately, rejected by the Corporation vide their letter dated 16.7.2001. It is thus clear that the petitioners were making unfair allegations against the Corporation.

36. The next contention urged is that, it was obligatory on the part of the Corporation to ensure that the best possible price was procured so as to effect maximum recovery of their dues. In the submission of the petitioners, the Corporation failed to discharge this obligation. Last desperate attempt was made by the petitioners to submit that the petitioners were ready and willing to deposit Rs.100 lakhs in the Court so as to prove their bonafides. In order to ascertain the bonafides of the petitioners, this petition was adjourned to seek an undertaking from the petitioners in this behalf. It was also made clear to them that this Court would be inclined to grant reasonable time to make deposit. However, on the next date of hearing when the matter was taken up, the petitioners did not furnish undertaking and have given complete go-bye to their original proposal. They came out with a new proposal to say that they were ready to deposit Rs.140 lakhs in easy instalments by way of one time settlement. This offer came during the course of second

hearing of the petition. The petitioners were granted liberty to amend their petition so as to invite reaction of the respondents.

37. The Corporation refused to accept this proposal, in our opinion, rightly looking to the past conduct of the petitioners and creation of third party rights in the property in question.

38. Learned Counsel appearing for the respondent No.2 while supporting the action of the respondent No.1/Corporation, contends that respondent No.2 by relying upon the representation made by the Corporation, parted with a huge amount and obtained sale deed of the industrial unit of the petitioners and thereby respondent No.2 have acquired right, title and interest over the said industrial unit. Under these circumstances, at this stage, this Court should not interfere with the action of the Corporation, especially when the petitioners have failed to show their bonafides in repayment of dues. They had no desire to repay their dues, due and payable to the Corporation.

39. We are of the opinion that the whole attempt on the part of petitioners was to settle the entire liability only by offering to pay meagre sum of Rs.108 lakhs that too over a period of two years. As against this, the Corporation could realise 100.00 lakhs from the sale of the

single unit and rest amount can be realised from the guarantors who are holding extensive immovable properties and business interests in various business establishments. Considering the recovery of the public money and possibility of realisation of the outstanding dues of the Corporation from the guarantors, it would not be in the public interest to exercise writ jurisdiction in favour of the petitioners and accept the prayer made by the petitioners.

40. Taking over all view of the matter and considering the facts and circumstances brought on record and the rival submissions advanced, we see no reason to interfere with the action of the Corporation. We find no fault with the decision making process adopted by the Corporation. On the contrary, we find that the action of the Corporation is bonafide, above-board and taken in the interest of the petitioners themselves by realising maximum possible price of the industrial unit which had not gone into the production till the date of its sale. Needless to observe that petitioners were unfair to the Corporation and had no genuine desire to repay or discharge their liability.

41. In the result, the petition is devoid of any substance. The same is dismissed. Rule is discharged, with costs, quantified in the sum of Rs.10,000/- for filing frivolous petition based on suppression of true facts.

V.C. DAGA, J.

P.V. HARDAS, J.

ssm.